

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 93-517-W/S - ORDER NO. 93-922 ✓
OCTOBER 4, 1993

IN RE: Application of Lake Keowee Utility)	ORDER
Systems, Inc. for Approval of a)	APPROVING
Transfer of the Water and Sewer)	TRANSFER AND
Facilities in Keowee Key Subdivision)	EXEMPTION
in Oconee County from Realtec, Inc.,)	
and Exemption from Regulation as)	
a Homeowners Association.)	

This matter comes before the Public Service Commission of South Carolina (the Commission) on the Application of Lake Keowee Utility Systems, Inc. (the Applicant), which applied for approval of the transfer of the water and sewer facilities, territory, and certificates of Keowee Key Development from Realtec, Incorporated (Realtec) to the Applicant, and for an exemption from Commission regulation as a Homeowners Association. This Application is filed pursuant to R. 103-502.3, 103-702.3, 103-504, and 103-704 of this Commission's Rules and Regulations.

Subsequent to the filing of the Application, Keowee Key Utilities, Inc. (KKUI) intervened as a party of record in the case. On September 22, 1993, KKUI moved to withdraw its intervention. After due consideration, the Commission grants the Motion of KKUI to withdraw its intervention.

On February 4, 1993, this Commission held a hearing in Docket No. 92-573-W/S concerning the Application of KKUI for a transfer of the facilities to it from Realtec, Inc. Although that Application was subsequently denied, this Commission heard considerable testimony from the residents of the Keowee Key Development. The Commission, at that time, was very impressed with the financial commitments obtained by the residents, and the knowledge and expertise presented by representatives of that group. The Commission takes administrative notice of the residents' testimony in that case, specifically, the testimony of Frank L. Kennard and Nedra L. Van Gombos.

Regulations 103-504 and 103-704 state that:

No existing public utility supplying (sewerage) (water) to the public or any corporation undertaking the acquisition of a utility shall acquire said utility system, without first obtaining from the Commission a certificate that the sale or acquisition is in the public interest, or that public convenience and necessity require, or will require operation of any utility system.

Those regulations go on to state that:

Such a certificate shall be granted only after specific information has been filed, and after notice has been given to the Department of Health and Environmental Control (DHEC), to other utilities, to the public, and after due hearing.

Further, our Regulations 103-502.2 and 103-702.2 state that a "homeowners association," upon Commission Order, may be found not to be a utility upon a satisfaction of certain requirements. Regulations 103-502.3 and 103-702.3 define a homeowners association as an association of lot owners located in a particular subdivision

or development incorporated under the laws of this State as a non-profit corporation, including as one of its purposes, the operation of a sewage system or water system to serve the particular subdivision or development. The regulation goes on to state that each homeowners association, prior to the commencement of operations of a sewage or water system shall file with the Commission, a) a certified copy of its Certificate of Incorporation, b) a copy of the corporation's bylaws, c) a copy of any declaration of covenants, conditions and restrictions on real property in the subdivision or development filed in conjunction with the formation of the homeowners association, d) a copy of the permit or authorization from the DHEC, issued to the homeowners association to operate the system, and e) copies of a statement signed by each lot owner disclosing that the sewage or water services in a subdivision are provided by a non-profit homeowners association in which each lot owner is a voting member, and that an appropriate assessment to meet operating expenses of the utility must be paid by each lot owner.

A review of the Application shows that the Applicant has complied with subsections (a), (b), (c), and (d) of R. 103-502.3 and 103-702.3. With regard to subsection (e), the Applicant notes that a Notice of Special Meeting was mailed to each property owner on January 5, 1993. Attached to this notice was a proxy for property owners not able to attend the meeting. The special meeting was held on January 25, 1993 pursuant to the Lake Keowee Property Owners Association bylaws. Pursuant to page 5, bylaw IV

§8, the majority vote of a quorum present is all that is necessary for a adoption of any matter. Pursuant to §7, a quorum is 20% of the property owners. Approximately 90% of the property owners either in person or by proxy voted for the purchase of the utility system by the Applicant. On June 3, 1993, an additional special notice relating to the proposed purchase was sent to the property owners who had not attended the January 25, 1993 meeting, and had not sent a proxy vote. On July 22, 1993, additionally, a certified letter was sent the the remaining non-voting property owners. Moreover, the Applicant states the the Association has sent out to each member two additional notices, one through its August 30, 1993 monthly newsletter to all property owners advising the owners of the Application, and one through its September 7, 1993 Annual Report. The Applicant alleges that all property owners have had an opportunity to be heard on the issue, beginning with the Special Meeting held on January 25, 1993 for the purpose of acting upon a proposed purchase of Realtec's utility system.

Because of the multiple notices given to the property owners, the Applicant is of the opinion that the property owners have appropriately been notified and provided an appropriate opportunity to be heard on this matter. Despite all these notices, however, the Applicant does not have signed documents from 100% of the property owners as required by R.103-502.3(e) and R.103-702.3(e). The Applicant, therefore, asks for several waivers. First, the Applicant asks that the Commission find that it has met the requirements of R.103-502.3 and 103-702.3, or in the alternative,

that the Commission waive the requirements of R.103-502.3 and 103-702.3. Further, the Applicant requests that the Commission waive the requirements of R.103-504 and R.103-704, should the Commission determine that the above notices and opportunities to be heard met the intent but not other technical requirements of those regulations. Further, the Applicant requests a waiver of the hearing requirement of R.103-504 and R.103-704.

Regulation 103-803 states that:

In any case, where compliance with any of these rules and regulations produces unusual hardship or difficulty, the application of such rule or regulation may be waived by the Commission upon a finding by the Commission that such waiver is in the public interest.

The Commission has considered the request for waiver of the above-captioned rules, and believes that waivers are appropriate and in the public interest. As the Applicant has stated in various filings with this Commission, multiple notices and opportunities to be heard have been given to the residents of the Keowee Key Subdivision. For this reason, the Commission will hereby waive the requirements of R.103-502.3(e) and R.103-702.3(e). Despite the fact that the Applicant has not received signed documents from 100% of the residents, the Commission believes that adequate notice of the Property Owners Association intent to acquire the utility. The Commission believes that the Applicant has met the requirements of R.103-502.3 (a),(b),(c), and (d) and R.103-702.3 (a),(b),(c), and (d), but, that to hold the Applicant to the (e) part of those regulations would produce an unusual hardship, considering the herculean effort by the Applicant to attempt to comply with this

part of the regulations. Further, the Commission believes that it is in the public interest to waive the hearing provisions, and further notice provisions of R.103-504 and R.103-704 respectively, again, because of the multiple notices and opportunity for hearing provided by the Applicant in this case. Further hearings or notices would constitute an unusual hardship. Other provisions of R.103-504 and R.103-704 have been complied with.

With regard to the transfer itself from Realtec to the Applicant, the Commission has examined the Application, and as stated, has heard from representatives of the Property Owners Association on February 4, 1993 in Docket No. 92-573-W/S. The Commission is highly impressed with the resources and qualifications of the Property Owners Association in this Docket. The Commission therefore believes that the acquisition of both water and sewer systems by the Applicant is in the public interest. The Commission therefore believes that the transfer should be approved as requested. With regard to exemption from Public Service Commission regulation as a Homeowners Association, the Commission believes that the Applicant has made an appropriate showing in the Application, and has presented all appropriate documents to this Commission with the exception of those waived, as stated above. The Commission is therefore of the belief that the Applicant should be declared not to be a utility under the provisions of R.103-502.2 and R.103-702.2. Therefore, the Commission also believes that the Applicant is a proper Homeowners Association as stated in R.103-502.3 and R.103-702.3, and,

therefore, should be exempt in the future from this Commission's regulation. The Commission therefore makes the following findings of fact and conclusions of law:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. That it is in the public interest to waive the provisions of R.103-502.3, 103-702.3, 103-504, and 103-704 as described above.

2. That the acquisition of the water and sewer utilities by Lake Keowee Utility Systems, Inc. from Realtec, Inc. is in the public interest and should be approved.

3. That Lake Keowee Utility Systems, Inc. is hereby held not to be a regulated utility under the provisions of the Commission's statutes, rules and regulations pursuant to R.103-502.2 and R.103-702.2.

4. That Lake Keowee Utility Systems, Inc. is a Homeowners Association under the provisions of R.103-502.3 and R.103-702.3.

5. That Lake Keowee Utility Systems, Inc. should be exempt from regulation by this Commission from the date of this Order forward.

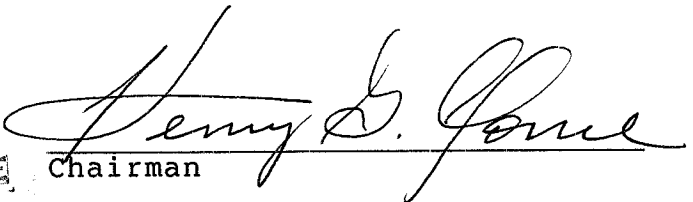
6. That the Motion to Withdraw Intervention of Keowee Key Utilities, Inc. should be granted.

7. That this Order shall remain in full force and effect until further Order of the Commission.

IT IS THEREFORE ORDERED:

That the findings and conclusions as stated above are so
ordered.

BY ORDER OF THE COMMISSION:


VICE Chairman

ATTEST:


Executive Director

(SEAL)